

Senate Bill No. 221

CHAPTER 721

An act to amend, repeal, and add Section 8670.32 of the Government Code, relating to oil spills, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 221, Alpert. Oil spill prevention.

(1) Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, prohibits the operation of a nontank vessel, as defined, of 300 gross registered tons or greater in the marine waters of the state unless the owner or operator prepares and submits an oil spill contingency plan to the administrator for oil spill response, in accordance with prescribed procedures and requirements, and the plan is approved. Existing law prohibits a nontank vessel, required to have a contingency plan, from entering marine waters of the state unless the owner or operator has provided to the administrator evidence of financial responsibility that demonstrates the ability to pay at least \$300,000,000 to cover damages caused by a spill, and the owner or operator has obtained a certificate of financial responsibility from the administrator for the vessel.

Existing law, operative until January 1, 2001, authorizes the administrator for oil spill response to establish a lower standard of financial responsibility for nontank barges and marine construction vessels, as defined, that is not less than the expected costs from a reasonable worst case oil spill into marine waters. Existing law defines the term "reasonable worst case spill" for purposes of those nontank barges and marine construction vessels. Existing law provides that after January 1, 2001, the law in effect before that date would again become operative.

This bill would delete the repeal of existing law and would revise the definition of the term "reasonable worst case spill" to apply only to the preparation of contingency plans. The bill would repeal the definitions of marine construction vessels and nontank barge and would revise the definition of nontank vessel to mean a vessel of over 300 gross tons other than a tanker or barge, as those terms are defined in existing law.

The bill would also, until January 1, 2003, authorize the administrator to establish a lower standard of financial responsibility for nontank vessels that have a carrying capacity of 6500 barrels of oil or less or 7500 barrels of oil or less under specified circumstances. The

bill would prohibit the administrator from setting a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(2) The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 8670.32 of the Government Code, as amended by Section 1 of Chapter 687 of the Statutes of 1999, is amended to read:

8670.32. (a) The following definitions govern the construction of this section:

(1) “Nontank vessel” means a vessel, of 300 gross tons or greater, other than a tanker or barge, as those terms are defined in Section 8670.3.

(2) “Reasonable worst case spill” means, for the purposes of preparing contingency plans pursuant to subdivisions (c) to (h), inclusive, a spill of the total volume of the largest fuel tank on the nontank vessel.

(3) “Qualified individual” means a shore-based representative of a covered nontank vessel owner or operator that, at a minimum, shall be fluent in English, located in the continental United States, be available on a 24-hour basis, and have full written authority to implement the covered nontank vessel’s contingency plan.

(b) A nontank vessel of 300 gross registered tons or greater shall not operate in the marine waters of the state unless the owner or operator has an oil spill contingency plan prepared, submitted, and approved in accordance with this section.

(c) On or before September 1, 1999, each owner or operator of a nontank vessel of 300 gross registered tons or greater shall prepare an oil spill contingency plan for that vessel, and submit the plan to the administrator for review and approval. The plan may be specific to an individual vessel or may be developed using either of the following:

(1) A fleet plan submitted by an owner or operator that has a number of vessels that transit the same or substantially the same routes in marine waters of the state. This fleet plan shall contain all prevention and response elements required pursuant to this section. A separate appendix for each vessel shall be included as an attachment to the plan, and shall include both of the following:

(A) Specification of the type and total amount of fuel carried.

(B) Specification of the capacity of the largest fuel tank.

(2) The owner or operator provides evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation, or other nonprofit maritime association, to provide a statewide spill

response plan consistent with the requirements of this section, pursuant to its applicable fee structure.

(d) The geographic regions covered by an individual plan shall be defined in regulations adopted by the administrator.

(e) In addition to all other contingency plan requirements in this section, the plan shall contain, at a minimum, a procedure for management of the resources to be used in response to an oil spill.

(f) The vessel owner or operator shall submit any information, or address any plan element that is required by this section but not addressed by a statewide spill response plan.

(g) The administrator shall adopt regulations and guidelines to implement the requirements of this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources and shall include provisions for public review and comment on submitted contingency plans prior to approval. The regulations shall ensure that a contingency plan meets all of the following requirements:

(1) Be consistent with the protection and response strategies as well as other elements addressed in the state contingency plan and the appropriate area contingency plan, and is not in conflict with the national contingency plan.

(2) Be a written document, reviewed for feasibility and approved by the owner or operator, or a person designated by the owner or operator.

(3) Establish a specific chain of command and specify the overall responsibilities of crew, supervisory, contract, and volunteer personnel.

(4) Detail procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened discharge, or discharge.

(5) Specify lines of communication between the vessel and the on-scene commanders, response teams, and local, state, and federal response organizations.

(6) Provide for response planning, including coordination with employees, outside contractors, volunteers, and local, state, and federal agencies.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone number, and facsimile number of an agent for service of process, located in the state and designated to receive legal documents on behalf of the planholder.

(9) Demonstrate that shipboard personnel have knowledge of the notification requirements and other provisions of the contingency plan.



(10) Provide for timely and effective oil spill response. This may be provided directly or through membership in, or contract with, a private or public cooperative or other organization and shall be consistent with the state contingency plan and the appropriate area contingency plan, and not in conflict with the national contingency plan.

(11) Provide evidence that the vessel is in compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(h) Each contingency plan shall be submitted and resubmitted to the administrator for review and approval as specified in Section 8670.31.

(i) (1) A nontank vessel, required to have a contingency plan pursuant to this section, shall not enter marine waters of the state unless the vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars (\$300,000,000) to cover damages caused by a spill, and the owner or operator of the vessel has obtained a certificate of financial responsibility from the administrator for the vessel. The administrator may charge a vessel owner or operator a reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(2) Notwithstanding paragraph (1), the administrator may establish a lower standard of financial responsibility for nontank vessels that have a carrying capacity of 6500 barrels of oil or less, or a carrying capacity of 7,500 barrels of oil or less for nontank vessels owned and operated by California or a federal agency. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(j) A nonprofit maritime association that provides spill response services pursuant to a spill response plan approved by the administrator, and its officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide spill response plan.

(2) A nonprofit maritime association providing spill response plan services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or

employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of a contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in subdivision (q) of Section 8670.3 of this code and in subdivision (p) of Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in subdivision (q) of Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in subdivision (c) of Section 8670.56.6.

(k) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with the nonprofit maritime association to provide spill response services for the association spill response plan.

(l) (1) Except as provided in paragraph (2), any nontank vessel that is subject to subdivision (b) or (i), and that enters the waters of the state in violation of subdivision (b) or (i), is subject to an administrative civil penalty of up to one hundred thousand dollars (\$100,000). The administrator shall assess the civil penalty against the owner or operator of the vessel pursuant to Section 8670.68. Each day the owner or operator of a nontank vessel is in violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(m) (1) Except as provided in paragraph (2), any owner or operator of a nontank vessel that is subject to subdivision (b) or (i) and who knowingly and intentionally enters the waters of the state in violation of subdivision (b) or (i), is guilty of a misdemeanor punishable by up to one year of imprisonment in the county jail, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine. Each day the owner or operator of the nontank vessel is in knowing and intentional violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(n) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 2. Section 8670.32 is added to the Government Code, to read:

8670.32. (a) The following definitions govern the construction of this section:

(1) “Nontank vessel” means a vessel, of 300 gross tons or greater, other than a tanker or barge, as those terms are defined in Section 8670.3.

(2) “Reasonable worst case spill” means, for the purposes of preparing contingency plans pursuant to subdivisions (c) to (h), inclusive, a spill of the total volume of the largest fuel tank on the nontank vessel.

(3) “Qualified individual” means a shore-based representative of a covered nontank vessel owner or operator that, at a minimum, shall be fluent in English, located in the continental United States, be available on a 24-hour basis, and have full written authority to implement the covered nontank vessel’s contingency plan.

(b) A nontank vessel of 300 gross registered tons or greater shall not operate in the marine waters of the state unless the owner or operator has an oil spill contingency plan prepared, submitted, and approved in accordance with this section.

(c) On or before September 1, 1999, each owner or operator of a nontank vessel of 300 gross registered tons or greater shall prepare an oil spill contingency plan for that vessel, and submit the plan to the administrator for review and approval. The plan may be specific to an individual vessel or may be developed using either of the following:

(1) A fleet plan submitted by an owner or operator that has a number of vessels that transit the same or substantially the same routes in marine waters of the state. This fleet plan shall contain all prevention and response elements required pursuant to this section. A separate appendix for each vessel shall be included as an attachment to the plan, and shall include both of the following:

(A) Specification of the type and total amount of fuel carried.

(B) Specification of the capacity of the largest fuel tank.

(2) The owner or operator provides evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation,

or other nonprofit maritime association, to provide a statewide spill response plan consistent with the requirements of this section, pursuant to its applicable fee structure.

(d) The geographic regions covered by an individual plan shall be defined in regulations adopted by the administrator.

(e) In addition to all other contingency plan requirements in this section, the plan shall contain, at a minimum, a procedure for management of the resources to be used in response to an oil spill.

(f) The vessel owner or operator shall submit any information, or address any plan element that is required by this section but not addressed by a statewide spill response plan.

(g) The administrator shall adopt regulations and guidelines to implement the requirements of this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources and shall include provisions for public review and comment on submitted contingency plans prior to approval. The regulations shall ensure that a contingency plan meets all of the following requirements:

(1) Be consistent with the protection and response strategies as well as other elements addressed in the state contingency plan and the appropriate area contingency plan, and is not in conflict with the national contingency plan.

(2) Be a written document, reviewed for feasibility and approved by the owner or operator, or a person designated by the owner or operator.

(3) Establish a specific chain of command and specify the overall responsibilities of crew, supervisorial, contract, and volunteer personnel.

(4) Detail procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened discharge, or discharge.

(5) Specify lines of communication between the vessel and the on-scene commanders, response teams, and local, state, and federal response organizations.

(6) Provide for response planning, including coordination with employees, outside contractors, volunteers, and local, state, and federal agencies.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone number, and facsimile number of an agent for service of process, located in the state and designated to receive legal documents on behalf of the planholder.

(9) Demonstrate that shipboard personnel have knowledge of the notification requirements and other provisions of the contingency plan.

(10) Provide for timely and effective oil spill response. This may be provided directly or through membership in, or contract with, a private or public cooperative or other organization and shall be consistent with the state contingency plan and the appropriate area contingency plan, and not in conflict with the national contingency plan.

(11) Provide evidence that the vessel is in compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(h) Each contingency plan shall be submitted and resubmitted to the administrator for review and approval as specified in Section 8670.31.

(i) A nontank vessel, required to have a contingency plan pursuant to this section, shall not enter marine waters of the state unless the vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars (\$300,000,000) to cover damages caused by a spill, and the owner or operator of the vessel has obtained a certificate of financial responsibility from the administrator for the vessel. The administrator may charge a vessel owner or operator a reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(j) A nonprofit maritime association that provides spill response services pursuant to a spill response plan approved by the administrator, and its officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide spill response plan.

(2) A nonprofit maritime association providing spill response plan services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of a contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in subdivision (q) of Section 8670.3 of this code and in

subdivision (p) of Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in subdivision (q) of Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in subdivision (c) of Section 8670.56.6.

(k) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with the nonprofit maritime association to provide spill response services for the association spill response plan.

(l) (1) Except as provided in paragraph (2), any nontank vessel that is subject to subdivision (b) or (i), and that enters the waters of the state in violation of subdivision (b) or (i), is subject to an administrative civil penalty of up to one hundred thousand dollars (\$100,000). The administrator shall assess the civil penalty against the owner or operator of the vessel pursuant to Section 8670.68. Each day the owner or operator of a nontank vessel is in violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(m) (1) Except as provided in paragraph (2), any owner or operator of a nontank vessel that is subject to subdivision (b) or (i) and who knowingly and intentionally enters the waters of the state in violation of subdivision (b) or (i), is guilty of a misdemeanor punishable by up to one year of imprisonment in the county jail, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine. Each day the owner or operator of the nontank vessel is in knowing and intentional violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(n) This section shall become operative on January 1, 2003.

SEC. 2.5. Section 8670.32 of the Government Code, as added by Section 2 of Chapter 687 of the Statutes of 1999, is repealed.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the administrator for oil spill response may authorize a lower standard of financial responsibility for nontank vessels as soon as possible, as authorized for small barges pursuant to subdivision (a) of Section 8670.37.53 of the Government Code, it is necessary for this act to take effect immediately.

